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ABSTRACT

The prison press in the United States operates under varying degrees of First Amendment freedom. Court decisions have been varied, and have not resolved whether convicts can produce or receive publications without censorship by prison officials. Until about 1970, censorship of the prison press was rarely challenged. Most newspapers and magazines produced by inmates were innocuous "house organs behind bars." But in the early 1970s, perhaps as a result of prison revolts or of general social upheaval, some inmate editors grew bolder and some administrators more tolerant. Until that time the courts had maintained a centuries-old traditional "hands-off" attitude toward prisons, but then lower courts ruled that two prison papers that had been shut down could continue publishing under certain provisions and that inmates could receive outside publications through the mail. The Supreme Court later ruled in the Martinez case that prison officials could censor mail only if they showed that not to do so would hurt prison security or rehabilitation of inmates. This ruling left a gate open for a series of lawsuits aimed at defining inmates' First Amendment rights. The Court must now develop an analytical framework to guide lower federal courts when prisoners' First Amendment speech rights are at issue. The Supreme Court should adopt the Martinez test in other litigation. In the meantime, inmates' First Amendment rights continue to vary from prison to prison. (HTH)

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THE PRISON PRESS

FREEDOM OF INFORMATION CENTER REPORT NO. 461

This report was written by John Hausman, a master's candidate at the University of Missouri School of Journalism.

In 1980, the entire staff of an award-winning California newspaper was fired.

The paper had exposed unsanitary conditions at a local food service, complete with photographs of dirty trays, bird droppings in the eating area and food scattered on the kitchen floor. Unfortunately for the staff, the paper's publisher also ran the food service.

The newspaper was the San Quentin News, edited and written by convicts, a journal with a national reputation and a record of winning prison press awards.[1] The publisher, of course, was the prison administration; the subject of the expose was the inmates' mess hall.

San Quentin's information officer told outside reporters that the story had violated an agreement between the warden and the newspaper's staff "not to print anything that would cause trouble in the institution, nothing that was obscene, and material of good caliber" (Los Angeles **Times**, February 27, 1980).

That same year, the national media discovered another prize-winning, inmate-edited publication. The bimonthly magazine **Angolite** had been uncensored since 1975, when a reform-minded warden took over Louisiana State Penitentiary in Angola.

One story the **Angolite** ran without censorship was an investigative report on a prison murder five years earlier. The story raised the possibility of official misfeasance. Another, which won the George Polk award for special-interest reporting, was a "chilling account of homosexual rape and subjugation behind bars," in the words of **Time** magazine.

The **Angolite** editors were permitted to roam freely within the prison and even to leave the grounds, under guard, to research stories and make public appearances.[2]

These examples illustrate the varying degrees of First Amendment freedom allowed prisoners in the United States. Court decisions, the ultimate arbiter, have been just as varied: they have not resolved whether convicts can produce or receive publications without censorship by prison officials. The result is a confusing tangle of policies, legal opinions and constitutional "tests."

THE DOCILE ERA

Until about 1970, censorship of the prison press was rarely challenged. Most newspapers and magazines produced by inmates were innocuous "house organs behind bars," in the words of one commentator.[3]

Prison newspapers began in the 1880s (with the exception of a short-lived 1800 attempt called **The Forlorn Hope**, aimed at an outside audience and dedicated to the abolition of imprisonment for debt). Three were founded in fairly rapid succession: **The Summary** at Elmira Reformatory, New York, in 1883; **Our Paper** at the Massachusetts Correctional Institution, Concord, in 1885; and the **Prison Mirror** at Minnesota State Penitentiary in Stillwater, in 1887 (founded by, among others, the Younger brothers of Jesse James-gang fame).[4]

Over the years, the penal press became almost universal. Editorial and production quality vary widely, from crude mimeographed sheets to slick magazines. Today, content varies from literature to news/editorial; most publications include such items as news about parole boards, prison policy and prison reform worldwide; local sports, activities of prison clubs and associations and legal columns by a "jailhouse lawyer" (an inmate who studies law and advises his fellow prisoners). Some prison publications are considered by professionals to be excellent; Southern Illinois University established an annual Penal Press Contest in the 1960s to honor the best of the publications.[5]

Nevertheless, the penal press eschewed controversy and avoided challenges to prison authorities until the 1970s. An observer in 1970 found censorship ubiquitous. "Any penal staff is caught in a two-way squeeze," wrote Robert S. Hastings in **Grassroots Editor**. Prisoners want more crusading journalism, while administrators want good public relations, Hastings wrote.

Officials left no doubt about where the final editorial decision lay. An assistant warden at Menard Prison in Illinois, home of **Menard Time**, one of the best-regarded inmate newspapers in the country, told Hastings: "We don't allow . . . beefs about the administration which we feel are not justified by fact." Administrators offered what they believe are reasonable arguments in favor of censorship: unlike outside reporters, prisoners cannot move around freely to verify leads and hence must depend largely upon rumor; and uncensored staffers might use the press to agitate for their own release, denying equal space to administrators' arguments.[6]

But in the early 1970s, perhaps as a result of prison revolts or of general social upheaval outside prison walls, some inmate editors grew bolder and some administrators more

Summary

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tolerant. Another writer for **Grassroots Editor**, writing in early 1973, found a greater degree of freedom than just a few years earlier.

Rick D. Pullen, analyzing 50 prison publications, found that some did carry controversial editorials and columns critical of prison administration or rules. Nevertheless, "censorship is exercised widely but with some discretion," Pullen wrote. Not only the blue pencil but fear of retribution suppressed outspoken inmates: "There is little doubt that fear to write is indeed a useful censorship tool used by prison authorities."[7]

But some inmates began to overcome their fear and turned to the courts, both for the right to publish and the right to receive controversial (and even not-so-controversial) publications from the outside.

ENTER THE COURTS

American courts, until the 1970s, maintained a traditional "hands-off" attitude toward prisons, reasoning that judges lack the expertise of prison administrators and should not second-guess their decisions. As a result, judges tended not to review prisoners' complaints that their rights were being violated.[8]

For many decades, court policy was typified by an 1871 Virginia Supreme Court decision that a prisoner is the "slave of the state," with no constitutional rights whatsoever, a concept inherited from English common law (**Ruffin v. Virginia**, 62 Va. 790 at 796 1871).

The first statement that prison inmates are protected by the Constitution came in a 1944 decision by the U.S. Court of Appeals for the 6th Circuit, upheld by the U.S. Supreme Court: "A prisoner retains all the rights of an ordinary citizen, except those expressly, or by necessary implication, taken from him by law."[9]

Nevertheless, courts continued to defer to administrators' judgment about just which rights it was necessary to withhold — until the early 1970s, when lower courts began to offer a potpourri of opinions on such First Amendment issues as prisoners' mail, receipt of outside publications and the right to speak and write freely.[10]

In 1970, **Vibrations** was founded at the Pennsylvania Correctional Institution at Pittsburgh. A new warden halted publication after it ran an article stating that an inmate who had been stabbed to death had earlier requested, and been refused, protection by guards.

According to an attorney for the prisoners, the **Vibrations** office was ransacked and one editor transferred to another prison at four in the morning, supposedly for planning an escape.

The prisoners went to court and reached an agreement with the state attorney general. A consent order permitted them to publish if they ran no "article which is obscene, libelous, inflammatory, or dangerous to prison administration, discipline or security." Decisions were to be made by majority vote of a board made up of one administrator, one inmate and one journalism teacher. In addition, no prisoners were to be transferred because of the newspaper's contents.[11]

In 1971, the **ALERTS Communitarian Newsletter** was founded by the Associated Library and Educational Research Team for Survival, a "politically oriented study group" at Lorton Correctional Complex in Virginia (part of the District of Columbia correctional system). The **Newsletter** sometimes contained radical opinions.

In early 1972, the prison authorities refused to publish an issue which detailed alleged abuses by certain Department of Corrections officials, whom the paper named. **ALERTS** took legal action and obtained a supervised agreement setting up rules under which the newsletter could be published. The main restrictions were that it could not encourage illegal acts or make unapproved references to specific individuals.[12]

The **Vibrations** and **ALERTS** cases were settled by court orders without reference to constitutional issues. Other early 1970s cases, relating to prisoners' access to outside publications, were decided by federal courts on constitutional grounds.

Martin Sostre, a black militant imprisoned in New York, sued to stop prison officials from interfering with his receiving radical literature through the mail. Authorities had kept him from receiving Black Panther newspapers, **Workers World** newspaper and five revolutionary books.

A U.S. District Court ruled that prison officials must provide at least "rudimentary due process" before withholding publications. Specifically, officials had to give the prisoner notice of their decision; give him the opportunity to appear at a hearing, in person or in writing; and ensure that the decision was made by "a body that can be expected to act fairly."[13]

A similar case was decided in Wisconsin on due process grounds. Gerald Gaugh, an inmate at Wisconsin Correctional Institution, filed a class action suit because state prison officials had kept him from receiving three books they considered obscene. A federal judge ruled that officials could not censor prisoners' reading matter without a judicial hearing to determine why. "The dividing line between publications which may be denied prisoners and those which may not is a matter not of administrative grace, but of constitutional right," Judge James E. Doyle wrote (Milwaukee **Journal**, January 18, 1974).

And in a third access case, a federal judge in Brooklyn ordered Suffolk County, New York, officials to provide jail prisoners with free newspapers normally read in the county, including the New York **Times**, New York **Daily News**, and **Newsday**. Authorities had withheld all newspapers on the grounds that crime and police news was disruptive. Judge Jack Weinstein, acting on a petition from a prisoner, called the denial a violation of the First Amendment[14].

In any case, none of these decisions was binding except within its own district, although courts in other districts sometimes follow the reasoning of a particular case.

ENTER THE SUPREME COURT

Until 1973, the California Department of Corrections had mail regulations for prisoners which stated flatly that "the sending and receiving of mail is a privilege, not a right, and any violation of the rules governing mail privileges either by you or by your correspondents may cause suspension of the mail privileges." Among the banned writings were any in which inmates "unduly complain (or) magnify grievances" and "any writings . . . expressing inflammatory political, racial, religious or other views or beliefs . . . which if circulated among other inmates in the judgment of the warden . . . tend to subvert prison order" (San Francisco **Chronicle**, February 6, 1973).

Finally, the regulations said, inmates "may not send or receive letters that pertain to criminal activity; are lewd, obscene, or defamatory; contain foreign matter, or are otherwise inappropriate."[15]

The regulations were challenged by two San Quentin inmates, Robert Martinez and Wayne Earley, in a class action suit on behalf of all California prisoners. In early 1973, a three-judge federal panel in San Francisco struck down the regulations, calling them "vague and overbroad." The court held that the rules violated the First Amendment and did not appear to serve prison discipline.

In the words of the court, "statements critical of prison life and personnel cannot be subject to censorship by the very people who are being criticized, simply to stifle such criticism." (**Martinez v. Procunier**, 354 F. Supp. 1092 N. D. Cal. 1973).

The court said censorship of outgoing mail should be narrow enough "to prohibit only such communications as are obscene and therefore not protected by the First Amendment, or as constitute a clear and present danger to the institution or its rehabilitation programs." Rejected was the Department of Corrections argument that prisoner mail was an internal administrative matter.

Raymond Procunier, head of the Department of Corrections, appealed the decision to the U.S. Supreme Court. In 1974, the Court unanimously affirmed the district court's decision — but on novel constitutional grounds, avoiding for the moment the issue of prisoners' rights.

The Court's majority opinion, written by Justice Lewis Powell, first rejected the old "hands-off" attitude: "When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights . . . This is such a case."

But the Court, unlike the California district court, did not rule on the basis of the First Amendment rights of prisoners, choosing instead a narrower basis: the right of correspondents outside the prison to communicate without censorship. "Censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendment rights of those who are not prisoners."

With this in mind, the Court decided the issue on the basis of a "two-prong" test, derived from an earlier decision about the right to burn draft cards (**United States v. O'Brien**, 391 U.S. 367 1968).

First (Powell wrote in **Procunier v. Martinez**), the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather, they must show that a regulation authorizing mail censorship furthers one or more of the substantial governmental interests of security, order, and rehabilitation.

Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved.

In other words, prison officials could censor mail only if they showed that it would hurt prison security or rehabilitation of inmates; and their policy had to be as narrowly drawn as possible. Otherwise, the majority of the Court ruled, administrators would be violating the First Amendment rights of citizens to correspond with prisoners.

A separate concurring opinion, written by Justice Thurgood Marshall and joined by Justices William Brennan Jr. and William O. Douglas, argued that the case should have been settled on the basis of **prisoners'** First Amendment rights, as the lower court had ruled in 1973. Marshall disapproved of the deliberate avoidance of the prisoners' rights issue[16].

Although **Procunier v. Martinez** concerned prisoners' mail, and a footnote specifically exempted publications (Note 11: "Different considerations may come into play in the case of mass mailings. No such issue is raised on these facts, and we intimate no view as to its proper resolution."[17]), some lower courts were to use the same reasoning on the issues of prisoners' rights to publish and to receive publications, as shall be seen.

Some legal commentators predicted that **Procunier**, because the Court majority had sidestepped the issue of prisoners' rights, would leave the door open to further lawsuits. One observer wrote: "If **Procunier** had been decided on the basis of prisoners' rights, any uncertainty as to standards to be applied in the censorship of prisoners' mail would be at an end. As it stands, the Court has left gaps that will result in further litigation."[18]

Another wrote, "The Court's refusal to reach and decide the issue of the extent to which a prisoner retains his first amendment rights is an open invitation to future litigation . . . leaving still unanswered the question of whether the full panoply of protections in the first amendment are retained behind the prison portals."[19]

Events were to prove the commentators right.

Meanwhile, in a second case the same year, the Court did address the issue of prisoners' First Amendment rights, albeit somewhat ambiguously. **Pell v. Procunier** was significant for its effect on outside reporters' access to prisoners. However, it also contained a phrase of more general application: "A prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with legitimate penological objectives of the corrections system."(**Pell v. Procunier**, 417 U.S. 817 1974 at 822). Like the 1944 **Coffin** case, this left open the questions of which rights are "not inconsistent" with a prisoner's status and who is to make that decision.

The third prisoners' First Amendment case heard by the Supreme Court was **Jones v. North Carolina Prisoners' Labor Union, Inc.** (433 U.S. 119 1977). Prison authorities had banned a prisoners' union from holding meetings in the prison and from soliciting new members among the inmates. The union was denied bulk-mailing privileges, preventing them from mailing their literature to prisoners.

The union sued, maintaining that these restrictions violated its rights of free speech and association and to equal protection of the law. A district court supported the union but was reversed by the Supreme Court. The Court reiterated the **Pell** standard ("legitimate penological objectives" take precedence over inmates' First Amendment rights) and concluded that prison meetings, which the union advocated in its mailings to inmates, were a threat to prison security.

However, the Court did not require administrators to prove that this threat existed. In the words of a law review commentator, the Court decided that "officials deserve substantial latitude in decisionmaking and . . . their decisions should be upheld unless conclusively proved incorrect."[20]

The **Pell** and **Jones** decisions were criticized by several legal scholars. "Under **Pell** and **Jones**," one wrote, "any time a prisoner asserts a First Amendment right that is simply inconsistent or incompatible with a right or interest asserted by the government, the prisoner's right must yield." This writer argued that the Court had ignored individual interests protected by the First Amendment while focusing solely upon social interests.[21]

Another legal commentator wrote: "It appears that the Court is willing to defer to officials upon a showing of any valid penal interest . . . In affording prison officials such wide latitude and deference, the Supreme Court has effectively denied prisoners judicial review of valid First Amendment claims."[22]

Lower courts have applied these decisions in divergent ways to cases involving the prison press and the right to receive publications.

One early case invoked **Procunier v. Martinez** to strike

down censorship of a prison newspaper, despite the Supreme Court's Note 11. The U.S. District Court for Vermont held that the "two-prong" test applies to inmate newspapers as well as to mail. Outside subscribers have the same right to receive a newspaper as to receive inmate mail, the Court ruled, and distribution to prisoners has the same protections and limitations applicable to free subscribers.

Prison authorities can suppress an inmate publication only if they can demonstrate that it poses a threat to prison security, order or rehabilitation, the Vermont court ruled in **The Laparar v. Stoneman** (382 F. Supp. 495 D. Vt. 1974). In the words of **U.S. Law Week**, "For First Amendment purposes, the U.S. District Court for Vermont sees no difference between inmate mail and a prison newspaper."[23]

A later federal court ruling took the opposite stance.

In 1973, inmates at Virginia State Penitentiary founded the magazine **FYSK** (Facts You Should Know), "a forum for inmate discussion and for communication between inmates and the staff of the penitentiary." **FYSK** was distributed free to inmates and for $5 a year to outsiders. It won several national awards for excellence.[24]

In December 1977, prison officials challenged the contents of the November-December issue on the grounds of "truth, fairness and good taste," contending that it might disrupt the prison. The officials prohibited prisoners from distributing the magazine. Two inmate-editors sued, with the help of the American Civil Liberties Union — and lost (Washington **Star**, March 25, 1979).

They appealed to the 4th U.S. Circuit Court of Appeals, arguing on the basis of **Procunier v. Martinez** that the First Amendment rights of outside subscribers should prevail unless officials can prove that those rights threaten prison security, order or rehabilitation. But the appeals court affirmed the Virginia judge's decision.

Unlike the court in the **Laparar** case, the appeals court distinguished **Procunier** from the **FYSK** case (**Pittman v. Hutto**, 594 F. 2d 407 4th Cir. 1979) because **Procunier** had concerned censorship of prison mail, not a publication. The court reasoned that mail censorship affects the rights of free correspondents more directly than does suppression of mass mailings. Instead, the court applied **Jones v. North Carolina Prisoners Union, Inc.**, ruling that prison officials can suppress publication and distribution of a prison publication if they reasonably and sincerely believe it threatens legitimate penological interests. Administrators' judgment should be relied upon unless proven wrong.[25]

A critique of the opinion in **Virginia Law Review**, while not challenging the **Jones** decision as others had done, contended that **Jones** was not applicable in the **FYSK** case. **Jones** was "content-neutral", the **Review** argued, concerned only with the danger of group activity in prison — not with the content of the activity, as the court had assumed in applying it to **Pittman v. Hutto**.[26]

Lower courts have been just as contradictory in applying Supreme Court decisions to the issue of prisoners' right to receive publications from the outside.

In a 1976 case, **Carpenter v. State of South Dakota** (536 F. 2d at 759 8th Cr. 1976), the 8th U.S. Circuit Court of Appeals upheld a prison censorship board's ban on publications containing sexually explicit materials. The court applied the first prong of the **Procunier** test and concluded that such materials would be detrimental to rehabilitation. However, the court took the prison board's word for this, demanding no evidence.[27]

The decision was criticized by a writer for **Capital University Law Review**. "In effect, such a procedure allows the prison authorities to become the final arbiter, once again, of the scope and extent of an inmate's First Amendment right," the critic wrote, "and if followed, may well prove devastating to the First Amendment rights involved in the sending and receipt of information and ideas via publications by prison inmates."[28]

In a similar ruling two years later, the 9th Circuit Court of Appeals ruled that Texas prison wardens could keep erotic books and magazines out of their institutions if they found the literature would "encourage deviate, criminal sexual behavior." The court noted that prisons have problems with homosexual rape that could be aggravated by pornography. But "censorship may not proceed according to the whims of administrators," the court said, and censorship guidelines were set for the prison (Washington **Post**, September 21, 1978).

Other federal courts have interpreted **Procunier** as permitting censorship of incoming publications:

- The U.S. District Court for Eastern Michigan in 1979 upheld prison regulations that prevented a prisoner from receiving the **National Socialist Bulletin**, a Nazi publication. The court decided that prison authorities were following the **Procunier** guidelines.[29]
- Two district courts in 1974 invoked **Procunier** to uphold Pennsylvania Bureau of Corrections regulations that left it up to prison officials' judgment what to allow into the prison.[30]
- A Louisiana district court applied **Procunier** to approve prison officials' ban on sexually explicit publications. Again, the court took the officials' word that the materials would be disruptive.[31]

Such interpretations were sharply criticized in the **Washington University Law Quarterly** in 1977. "Although the lower federal courts have invoked **Martinez**, most have failed to apply it properly," the author wrote. "They unnecessarily restricted non-prisoners' rights to send publications as well as prisoners' rights to receive them."[32]

In regard to the Louisiana decision, the critic wrote: "Although the **Martinez** test may not require proof beyond a reasonable doubt that the prohibition of sexually explicit publications would further security, order, or rehabilitation, it properly requires more than a mere assertion."[33]

More to the critic's liking was a Connecticut decision, **Cofone v. Manson** (409 F. Supp. 1033 D. Conn. 1976). In this case, the district court struck down rules permitting prison administrators to keep out publications that "advocate disruption within institutions or in the community; have demonstrably caused disruption within the institutions or in the community; . . . (or) obstruct rehabilitative objectives." The court found these regulations too broad to be covered by the "two-prong" test, particularly the "rehabilitative objectives" phrase.[34]

And still another case, this one in Wisconsin, ended in victory for prisoners. Four inmates of the Wisconsin State Prison, joined by the Wisconsin Civil Liberties Union, sued state prison officials for preventing them from receiving the left-wing Milwaukee **Worker**. Plaintiffs charged that prison rules limiting the kinds of newspapers and magazines permitted to reach inmates violated the First Amendment (Milwaukee **Journal**, December 21, 1976).

The federal judge responded by giving inmates' lawyers a voice in drafting new censorship rules, and the assistant attorney general representing the state agreed to let the Milwaukee **Worker** into the prison (Milwaukee **Journal**, March 21, 1977).

Some legal observers maintain that the Supreme Court should clear up the confusion. Alan H. Gluck, writing in **Washington University Law Quarterly**, suggests that the

Court repudiate **Jones** as an "aberration" that unduly restricts free speech and further complicates the law.

The Court must develop an analytical framework to guide lower federal courts when prisoners' first amendment speech rights are at issue. Until the Court articulates a uniform standard that adequately protects inmates' first amendment free speech rights, rehabilitation rates will not rise, recidivism will remain a major problem, and lower federal courts will face much needless litigation. The adoption of the **Martinez** test as applied in **Cofone** would not only end unnecessary litigation but would also adequately protect the interests of prison officials, inmates and the general public. Thus, the Supreme Court should explicitly adopt this approach at the earliest opportunity, and hold that prisoners have first amendment free speech rights — including the right to receive publications.[35]

RULES AND CAPRICES

The Federal Bureau of Prisons' policyon outside publications is less restrictive than the state regulations that have figured in court cases. Literature may be barred only when "based on a showing" that it is detrimental to a prison's security, order or discipline, language reminiscent of the **Procunier** test. The prison's chief must notify the publisher in writing, explaining the reason for the rejection and offering the opportunity for a review within 15 days by the Bureau's regional director. The inmate concerned also receives a copy of the letter.[36]

Meanwhile, the lot of prison journalists continues to be as varied as the opinions of judges in different districts, ranging from a free-swinging **Angolite** to an unmanned San Quentin **News**.

A few recent samples:

- In December 1980, the superintendent of the California Medical Facility in Vacaville ordered the Christmas edition of the **Vacavalley Star**, a newspaper by and for inmates of the institution, destroyed. The editor had splashed the word "censored" over blank spaces left by four articles the superintendent had deleted (Washington **Post**, March 11, 1981).

- Earlier this year, the warden at Connecticut Correctional Institute ordered inmate Ronald O. Simmat transferred to another federal penitentiary in Wisconsin. Simmat, a convicted murderer, had been writing a weekly column for an outside newspaper in which he, among other things, frequently criticized the warden. Officials said the transfer was for Simmat's own safety: he had been attacked by other inmates three years earlier, before he began writing the column (New York **Times**, March 17, 1982).

- Late last year, the Kansas City **Times** ran a story from the Los Angeles **Times** Service about the **Mirror**, Minnesota State Penitentiary's 94-year-old pioneer newspaper. The story was headlined "Paper a ray of light behind prison walls." The inmate-editor described his paper's contents: "Little hard news . . . If somebody stabs somebody we're not allowed to touch it. Reporting on crime inside the prison walls is taboo. Anything controversial is taboo" (Kansas City **Times**, December 30, 1981).

Justice Thurgood Marshall had a different idea about prison writers. He concluded his opinion on **Procunier v. Martinez**:

> The First Amendment serves not only the needs of the polity but also those of the human spirit — a spirit that demands self-expression. Such expression is an integral part of the development of ideas and a sense of identity. To suppress expression is to reject the basic human desire for recognition and affront the individual's worth and dignity . . . Such restraint may be "the greatest indignity to a free and knowing spirit that can be put upon him." Milton, **Areopagitica**, at 21. When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded. If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment. Whether an O. Henry authoring his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium for self-expression. It is the role of the First Amendment and this Court to protect those precious personal rights by which we satisfy such basic yearnings of the human spirit.[37]

FOOTNOTES

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3. Title of a review of the book **The Penal Press**; review is in Freedom of Information Center file (Prisons/Access 1958-1972), no author, no source, no date.
4. Russell N. Baird, **The Penal Press** (Evanston, Ill.: Northwestern University Press, 1967), pp. 19-28.
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11. Dickson, pp. 528-29.
12. Ibid., p. 528.
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14. "Prisoners Are Given Access to Newspapers," **Editor and Publisher**, November 17, 1973, p. 33.
15. California Department of Correction Director's Rules 2401, 1701, 1205(d), 2402(8), quoted in **Procunier v. Martinez**, 416 U.S. 396 (1974).
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22. Mackarey, pp. 687-88.
23. "First Amendment Offers Limited Shelter for Inmate Newspaper," **U.S. Law Week** 43 (October 29, 1974): 1067.
24. Unsigned, in **Virginia Law Review**, p. 1488.
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26. Unsigned, p. 1492.
27. Susan G. Kimball, "Censorship of Publication Sent to Prison Inmates," **Capital University Law Review** 7 (1977): 331-32.
28. Ibid., p. 332.
29. **U.S. Law Week** 48 (August 7, 1979): 2086-87.
30. Gary v. Creamer, 376 F. Supp. 675 (W.D. Pa. 1974); **McCleary v. Kelly**, 376 F. Supp. 1158 (M.D. Pa. 1974), both cited in Gluck, pp. 675-77.
31. **Frazier v. Donelon**, 381 F. Supp. 911 (E.D. La. 1974), cited in Gluck, pp. 678-79.
32. Gluck, p. 675.
33. Ibid., p. 679.
34. Connecticut Department of Corrections, Administrative Directive, **Review of Reading Materials**, Ch. 3.7, para. 4, quoted in Gluck, pp. 678-79.
35. Gluck, p. 685.
36. Federal Bureau of Prisons, policy statement 7300.42B(4), quoted in Gluck, p. 674.
37. 416 U.S. 396, printed in **U.S. Law Week**, p. 4616.

CORRECTION

Freedom of Information Center Report No. 456, "Newspaper Preservation Act Update," states the following: "When the two Cincinnati papers applied to the Justice Department, the failing **Post** made it clear it was not for sale. Scripps-Howard, owner of the **Post**, told the department that if the application was denied the **Post** would close, although the **Post** was in no danger of failing" (p. 5).

The litigation record showed, and the hearing officer ruled, that the **Post** was in danger of failing. The Freedom of Information Center regrets the error and appreciates readers who let us know when we err.